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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 MICHELLE J. KINNUCAN,

10 Plaintiff,

11 v.

12 NATIONAL SECURITY AGENCY;
13 CENTRAL INTELLIGENCE AGENCY;
14 DEFENSE INTELLIGENCE AGENCY;
15 DEPARTMENT OF DEFENSE
Defendant.

Case No. 2:20-cv-1309 DWC

ANSWER TO PLAINTIFF'S FOIA
COMPLAINT

16
17 COMES NOW, Defendant United States National Security Agency ("NSA"), Central
18 Intelligence Agency ("CIA"), Defense Intelligence Agency ("DIA"), and Department of Defense
19 ("DOD"), (collectively "Federal Defendants") by and through Brian T. Moran, United States
20 Attorney, Western District of Washington, and Katie D. Fairchild, Assistant United States
21 Attorney for said District, and hereby answers Plaintiff's Complaint, Dkt. 1, as follows:

22 In response to the numbered paragraphs of the Complaint, Federal Defendants admit, deny,
23 or otherwise answer as follows:

24 Initially, Plaintiffs include an unnumbered introductory paragraph setting forth Plaintiff's
25 characterization of this action. While no response to this characterization is required, to the
26 extent that a response is deemed necessary, Federal Defendants admit that the action is brought
27

1 pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 and that Plaintiff requested
2 government records. The FOIA statute speaks for itself and Federal Defendants deny any
3 characterization of FOIA inconsistent with the language of the statute.

4 I. INTRODUCTION

5 1. The allegations in Paragraph 1 are Plaintiff's characterization of the FOIA requests at issue
6 in this litigation. Federal Defendants answer that the FOIA requests speak for themselves and
7 respectfully refers the Court to Plaintiff's FOIA requests for a complete and accurate statement of
8 their contents. Federal Defendants deny any characterization inconsistent with the language of
9 Plaintiff's FOIA requests.

10 2. To the extent that the allegations in Paragraph 2 purport to characterize a written
11 communication from a Federal Defendant to Plaintiff, Federal Defendants answer that the
12 contents of any written communication speak for themselves. The remaining allegations in
13 Paragraph 2 consist of legal conclusions to which no response is required. To the extent that a
14 response is deemed necessary, Federal Defendants state that the FOIA statute speaks for itself and
15 deny any characterization of FOIA inconsistent with the language of the statute.

16 3. The allegations in Paragraph 3 consist of legal conclusions to which no response is
17 required. To the extent that a response is deemed necessary, Federal Defendants state that the
18 FOIA statute speaks for itself and deny any characterization of FOIA inconsistent with the
19 language of the statute.

20 4. Federal Defendants are without sufficient information to admit or deny Plaintiff's
21 allegations in Paragraph 4 concerning her reasons for making FOIA requests or her personal
22 background and therefore deny these allegations at this time. The remaining allegations in
23 Paragraph 4 may be interpreted to consist of legal conclusions to which no response is required.
24 To the extent that a response is deemed necessary, Federal Defendants state that the FOIA statute
25 speaks for itself and deny any characterization of FOIA inconsistent with the language of the
26 statute.

27 5. Federal Defendants are without sufficient information to admit or deny the allegations in

1 Paragraph 5 and therefore deny these allegations at this time.

2 6. The allegations in Paragraph 6 consist of legal conclusions to which no response is
3 required. To the extent that a response is deemed necessary, Federal Defendants state that the
4 FOIA statute speaks for itself and deny any characterization of FOIA inconsistent with the
5 language of the statute. Federal Defendants further answer that Plaintiff is not entitled to the
6 requested relief.

7 **II. PARTIES**

8 7. Federal Defendants are without sufficient information to admit or deny the allegations in
9 Paragraph 7 and therefore deny these allegations at this time.

10 8. NSA admits that it is an agency within the United States government subject to FOIA. To
11 the extent that the allegations of Paragraph 8 consist of conclusions of law or a characterization
12 of Plaintiff's FOIA request, no further response is required. To the extent that a further response
13 is deemed necessary, NSA states that the FOIA statute speaks for itself and denies any
14 characterization of FOIA inconsistent with the language of the statute and that Plaintiff's FOIA
15 request speaks for itself.

16 9. CIA admits that it is an agency within the United States government subject to FOIA. To
17 the extent that the allegations of Paragraph 9 consist of conclusions of law or a characterization
18 of Plaintiff's FOIA request, no further response is required. To the extent that a further response
19 is deemed necessary, CIA states that the FOIA statute speaks for itself and denies any
20 characterization of FOIA inconsistent with the language of the statute and that Plaintiff's FOIA
21 request speaks for itself.

22 10. DIA admits that it is an agency within the United States government subject to
23 FOIA. To the extent that the allegations of Paragraph 10 consist of conclusions of law or a
24 characterization of Plaintiff's FOIA request, no further response is required. To the extent that a
25 further response is deemed necessary, DIA states that the FOIA statute speaks for itself and denies
26 any characterization of FOIA inconsistent with the language of the statute and that Plaintiff's
27 FOIA request speaks for itself.

1 11. DOD admits that it is an agency within the United States government subject to
2 FOIA. To the extent that the allegations of Paragraph 11 consist of conclusions of law or a
3 characterization of Plaintiff's FOIA request, no further response is required. To the extent that a
4 further response is deemed necessary, DOD states that the FOIA statute speaks for itself and
5 denies any characterization of FOIA inconsistent with the language of the statute and that
6 Plaintiff's FOIA request speaks for itself.

7 **III. JURISDICTION**

8 12. Paragraph 12 contains conclusions of law to which no response is required. To the
9 extent that a response is deemed necessary, Federal Defendants state that the cited authority
10 speaks for itself, and puts Plaintiff to its proof.

11 **IV. VENUE**

12 13. Paragraph 13 contains conclusions of law to which no response is required. To the
13 extent that a response is deemed necessary, Federal Defendants state that the cited authority
14 speaks for itself, and puts Plaintiff to its proof.

15 **V. FACTS**

16 **The U.S.S. *Liberty* Incident**

17 14. The allegations in Paragraph 14 sets forth Plaintiff's description of historical events
18 to which no response is required. These allegations are immaterial to this FOIA action, provide
19 no claim for relief under FOIA, nor support a claim to which a response is required. To the extent
20 that a response is deemed necessary, Federal Defendants state that the FOIA statute speaks for
21 itself and denies any characterization of FOIA inconsistent with the language of the statute.

22 15. The allegations in Paragraph 15 sets forth Plaintiff's description of historical events
23 to which no response is required. These allegations are immaterial to this FOIA action, provide
24 no claim for relief under FOIA, nor support a claim to which a response is required. To the extent
25 that a response is deemed necessary, Federal Defendants state that the FOIA statute speaks for
26 itself and denies any characterization of FOIA inconsistent with the language of the statute. To
27 the extent that the allegations in Paragraph 15 cite or reference written materials, Federal

1 Defendants further respond that those materials speak for themselves.

2 16. Federal Defendants admit that some reports regarding the U.S.S. *Liberty* incident
3 identified in Plaintiff's Complaint previously have been released. In response to any remaining
4 allegations in Paragraph 16, Federal Defendants deny Plaintiff's characterization and remaining
5 allegations unless specifically admitted herein.

6 **NSA FOIA Requests**

7 17. NSA admits that Plaintiff submitted a FOIA request to NSA dated
8 February 18, 2019 (the "First NSA Request"). NSA respectfully refers the Court to the First NSA
9 Request, attached as Exhibit 1, for a complete and accurate statement of its contents.

10 18. NSA admits that it acknowledged receipt of the First NSA Request on
11 March 5, 2019 and assigned it case number 106371. To the extent that the allegations in
12 Paragraph 18 purport to characterize a communication from NSA to Plaintiff, NSA respectfully
13 refers the Court to its March 5, 2019 response, attached as Exhibit 2, for a complete and accurate
14 statement of its contents.

15 19. NSA admits that Plaintiff amended the First NSA Request on March 6, 2019. To
16 the extent that the allegations in Paragraph 19 purport to characterize a communication between
17 Plaintiff and NSA, NSA respectfully refers the Court to the March 6, 2019 amendment request,
18 attached as Exhibit 3, for a complete and accurate statement of its contents.

19 20. NSA admits that it sent correspondence to Plaintiff on March 7, 2019 and
20 March 14, 2019 regarding the First NSA Request. NSA further admits that the March 14, 2019
21 letter was the last correspondence NSA provided to Plaintiff regarding the First NSA Request.
22 To the extent that the allegations in Paragraph 20 purport to characterize communications between
23 NSA and Plaintiff, NSA responds that those communications speak for themselves and
24 respectfully refers the Court to its March 7, 2019 correspondence, attached as Exhibit 3, and its
25 March 18, 2019 correspondence, attached as Exhibit 4, for complete and accurate statements of
26 their contents. The remaining allegations in Paragraph 20 consist of legal conclusions to which
27 no response is required. To the extent that a response is deemed necessary, NSA states that the

1 FOIA statute speaks for itself and denies any characterization of FOIA inconsistent with the
2 language of the statute.

3 21. NSA admits that Plaintiff submitted a second FOIA request to NSA dated
4 June 17, 2020 (the "Second NSA Request"). NSA respectfully refers the Court to the Second
5 NSA Request, attached as Exhibit 5, for a complete and accurate statement of its contents.

6 22. NSA admits that it acknowledged receipt of the Second NSA Request in a letter
7 dated June 19, 2020 and assigned it case number 109763. NSA further admits that the
8 acknowledgement was the last correspondence NSA provided to Plaintiff regarding the Second
9 NSA Request. To the extent that the allegations in Paragraph 22 purport to characterize a
10 communication from NSA to Plaintiff, NSA respectfully refers the Court to its response, attached
11 as Exhibit 6, for a complete and accurate statement of its contents. The remaining allegations in
12 Paragraph 22 consist of legal conclusions to which no response is required. To the extent that a
13 response is deemed necessary, NSA states that the FOIA statute speaks for itself and denies any
14 characterization of FOIA inconsistent with the language of the statute.

15 **CIA FOIA Requests**

16 23. CIA admits that Plaintiff submitted a FOIA request to CIA dated May 31, 2020 (the
17 "CIA Request"). CIA respectfully refers the Court to the CIA Request, attached as Exhibit 7, for
18 a complete and accurate statement of its contents.

19 24. CIA admits that it acknowledged receipt of the CIA Request on June 3, 2020 and
20 assigned it number F-2020-01511. To the extent that the allegations in Paragraph 24 purport to
21 characterize a communication from CIA to Plaintiff, CIA respectfully refers the Court to its June
22 3, 2020 response, attached as Exhibit 8, for a complete and accurate statement of its contents.

23 25. In response to the allegations in Paragraph 25, which allege that on June 17, 2020,
24 Plaintiff submitted "follow up clarifications and amendments" to the CIA Request, and refer to
25 Exhibit C in Plaintiff's Complaint, CIA answers that, following a reasonable search, it has not
26 located a June 17, 2020 communication from Plaintiff. CIA further responds that, following a
27 reasonable search, it has not located correspondence from Plaintiff depicted in Exhibit C, which

1 appears to be dated July 1, 2020 rather than June 17, 2020.

2 26. CIA admits that the June 3, 2020 acknowledgement attached as Exhibit 8 was the
3 last correspondence CIA provided to Plaintiff regarding the CIA Request and further answers that
4 following a reasonable search CIA has not located any record of receiving Plaintiff's "follow up
5 requests" as alleged in the Complaint. The remaining allegations in Paragraph 26 consist of legal
6 conclusions to which no response is required. To the extent that a response is deemed necessary,
7 CIA states that the FOIA statute speaks for itself and denies any characterization of FOIA
8 inconsistent with the language of the statute.

9 **DIA FOIA Request**

10 27. DIA admits that Plaintiff submitted a FOIA request to CIA dated June 17, 2020
11 (the "DIA Request"), which DIA received on September 14, 2020. DIA respectfully refers the
12 Court to the DIA Request, attached as Exhibit 9, for a complete and accurate statement of its
13 contents.

14 28. The allegations in Paragraph 28 consist of legal conclusions to which no response
15 is required. To the extent that a response is deemed necessary, DIA states that the FOIA statute
16 speaks for itself and denies any characterization of FOIA inconsistent with the language of the
17 statute.

18 **VI. FIRST CLAIM FOR RELIEF**

19 **Violation of Freedom of Information Act (FOIA)**

20 **For Failure to Disclose Responsive Records**

21 29. Paragraph 29 purports to reallege and incorporate all preceding paragraphs and
22 therefore no response is required. To the extent a response is required, Federal Defendants
23 reassert their response to all preceding paragraphs.

24 30. Paragraph 30 consists of legal conclusions to which no response is required. To
25 the extent that a response is deemed necessary, Federal Defendants state that the FOIA statute
26 speaks for itself and deny any characterization of FOIA inconsistent with the language of the
27 statute.

31. Paragraph 31 consists of legal conclusions to which no response is required. To the extent that a response is deemed necessary, Federal Defendants state that the FOIA statute speaks for itself and deny any characterization of FOIA inconsistent with the language of the statute.

32. Paragraph 32 consists of legal conclusions to which no response is required. To the extent that a response is deemed necessary, Federal Defendants state that the FOIA statute speaks for itself and deny any characterization of FOIA inconsistent with the language of the statute.

33. Paragraph 33 consists of legal conclusions to which no response is required. To the extent that a response is deemed necessary, Federal Defendants state that the FOIA statute speaks for itself and deny any characterization of FOIA inconsistent with the language of the statute.

VII. PRAYER FOR RELIEF

The remainder of Plaintiff's Complaint sets for Plaintiff's prayer for relief, to which no response is required. To the extent that a response may be deemed necessary, Federal Defendants states that Plaintiff is not entitled to the requested relief.

GENERAL DENIAL

Pursuant to Rule 8(b)(3) Federal Defendants deny all allegations in the Complaint which they have not otherwise specifically admitted or denied herein.

DEFENSES

1. As to some or all of the claims asserted in this action, Plaintiff has failed to state a claim upon which relief may be granted under FOIA.

2. As to some or all of the claims asserted in this action, Plaintiff has failed to exhaust administrative remedies as required by FOIA.

3. Some or all of the records and requested information in Plaintiff's FOIA requests are exempt, or otherwise excluded, in whole or in part under the FOIA. *See* 5 U.S.C. § 552(b).

4. The Court lacks subject matter jurisdiction over any requested relief that exceeds the relief

1 authorized by the FOIA.

2 5. Federal Defendants have exercised due diligence in processing plaintiffs' FOIA request
3 and exceptional circumstances exist that necessitate additional time for the Defendant to complete
4 their processing of the FOIA request. *See* 5 U.S.C. § 552(a)(6)(C).

5 6. Plaintiff has not established a right to attorney's fees.

6 7. To the extent that the Complaint refers to or quotes from external documents or other
7 sources, Federal Defendants' Answer may refer to these materials; however Federal Defendants'
8 references are not intended to be, nor should they be construed to be, and admission that the
9 materials cited in Plaintiff's Complaint are: (a) correctly cited or quoted by Plaintiff; (b) relevant
10 to this or any other action; or (c) admissible in this, or any other action.

11 8. Federal Defendants assert that they have, or may have, additional affirmative defenses
12 which are not known to Federal Defendants at this time, but which may be ascertained during
13 litigation. Federal Defendants specifically preserves these and other affirmative defenses as they
14 are ascertained during litigation, including those required by Fed. R. Civ. P. 8 and 12 reserve the
15 right to amend, supplement, and assert additional affirmative defenses.

16 DATED this 8th day of October, 2020.

17
18 Respectfully submitted,

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